


M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director – MIC: 73

Date: September 23, 2004

From : 
Stephen R. Rudd, Acting Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : Regulation 1588, *Seeds, Plants and Fertilizer*
Chief Counsel's Rulemaking Calendar – October 19, 2004

I am requesting your approval to place proposed amendments to Regulation 1588, *Seeds, Plants and Fertilizer*, on the Chief Counsel's Rulemaking Calendar for Board approval.

Regulation 1588 provides various exemptions from the tax, including an exemption from the tax on sales of seeds and annual plants, and operative January 1, 1999, non-annual plants, the products of which ordinarily constitute food for human consumption or the products of which are to be sold in the regular course of the purchaser's business. The proposed amendments would rewrite, for clarity and simplicity, the provisions of Revenue and Taxation Code (RTC) 6358(c) by specifying in Regulation 1588(a) that the exemption includes sales of both seeds and plants that will produce either a product that ordinarily would constitute food for human consumption or that will produce a product the purchaser will resell, such as flowers.

Attached are proposed amendments to the regulation, which reflect the above change.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on October 19, 2004, for Board authorization to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Attachment

Recommendation by:



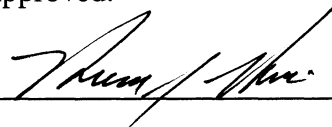
Deputy Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

Attachments

cc (all with attachments):
Mr. Timothy Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Acting Supervisor, BTC Team (MIC 50)
Ms. Cecilia Watkins (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

bc: BTCTS file – Regulation 1588
SUTD Deputy Director's File

Author: Cecilia Watkins

Proposed Amendments to Regulation 1588. SEEDS, PLANTS AND FERTILIZER

Reference: Sections 6358 Revenue and Taxation Code

(a) **SEEDS AND PLANTS.** Tax does not apply to sales of seeds, ~~and annual plants, and operative January 1, 1999, non-annual plants,~~ the products of which ordinarily constitute food for human consumption or the products of which are to be sold in the regular course of the purchaser's business. ~~Operative January 1, 1999, tax does not apply to sales of non-annual plants, the products of which ordinarily constitute food for human consumption,~~ including fruit trees, berry vines, and grape rootlings or rootstock, or cuttings of every variety. Tax does not apply to sales of seed, the products of which will be used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or the products of which are to be sold in the regular course of the purchaser's business.

(b) **FERTILIZER.**

(1) **DEFINITION.** The term "fertilizer" includes commercial fertilizers, agricultural minerals, and manure. The terms "commercial fertilizers" and "agricultural minerals" as used herein are defined in Sections 14522 (commercial fertilizer) and 14512 (agricultural minerals) of the Food and Agricultural Code. "Manure" means the excreta of any domestic animal or domestic fowl which is not artificially mixed with any material except a material which has been used for bedding, sanitary, or feeding purposes for such an animal or fowl or for the preservation of the manure. The term "fertilizer" does not include "soil amendments" or "auxiliary soil and plant substances" as these terms are defined (with the exception noted below) in Sections 14552 (soil amendments) and 14513 (auxiliary soil and plant substances) of the Food and Agricultural Code. For purposes of this regulation, "manures sold without guarantees for plant nutrients" as described in Section 14552 of the Food and Agricultural Code, are not soil amendments.

(2) **APPLICATION OF TAX.** Tax does not apply to sales of fertilizer to be applied to land (including foliar application) the products of which are to be: (a) used as food for human consumption, (b) used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or (c) sold in the regular course of the purchaser's business.

When insecticides are mixed with fertilizer and the mixture sold, that portion of the total price allocable to the fertilizer may be excluded from the measure of the tax if the mixed product is applied to land (including foliar application) the products of which are to be: (a) used as food for human consumption, (b) used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or (c) sold in the regular course of the purchaser's business.